

117299

20559

Eisen

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548****FILE:** B-203346**DATE:** January 15, 1982**MATTER OF:** S.A.F.E. Export Corporation**DIGEST:**

Determination of nonresponsibility will not be questioned absent a showing that it was reached in bad faith or lacks a reasonable basis.

S.A.F.E. Export Corporation (S.A.F.E. Export) protests its rejection as nonresponsible under request for proposals (RFP) DACA90-81-R-0009, issued by the U.S. Army Corps of Engineers, Europe Division, to provide and install intrusion detection systems at five ammunition storage bunkers and guard sites in Europe. The determination was based on the preaward survey team's visit to S.A.F.E. Export's place of business and the contracting officer's understanding that S.A.F.E. Export had a poor performance record on other Government contracts. S.A.F.E. Export complains that it was not given time to prepare for the preaward survey, and disputes the contracting officer's view of the firm's performance history.

The protest is denied.

S.A.F.E. Export's offer, which was the lowest one received, was submitted by S.A.F.E. Export "c/o SAFE OHG." (The president of SAFE Export is a partner in SAFE OHG.) S.A.F.E. Export's offices are in Baltimore, Maryland, while SAFE OHG's are in Frankfurt, Germany. The preaward survey team attempted a site investigation at the Frankfurt, Germany office of SAFE OHG, but the investigators were denied access to the office and were advised to conduct the preaward survey at S.A.F.E. Export's office in Baltimore. The survey of the Baltimore office, however, showed that no employees of S.A.F.E. were based there and that it was only the office of an accountant whose function was to receive and forward mail to SAFE OHG. The contracting officer also found that other contracting activities that dealt with S.A.F.E. Export were "uniformly negative" about S.A.F.E. Export's timeliness, conduct, and completion of performance.

S.A.F.E. Export asserts that the investigators were not allowed into SAFE OHG's office in Frankfurt because that firm was not the actual offeror under the RFP and because no one is allowed to enter SAFE OHG's office in any case without proper security clearances. As to the Baltimore office, S.A.F.E. Export contends that if it had been given advance notice of the survey it would have gathered all documents necessary for the survey at the Baltimore office.

The determination of a prospective contractor's responsibility is the duty of the contracting officer. In making the determination, the contracting officer is vested with a wide degree of discretion and business judgment. Generally, we will not question a nonresponsibility determination unless the protester can demonstrate bad faith by the agency or a lack of any reasonable basis for the determination. McNally Pittsburg Manufacturing Corporation, B-191221, June 13, 1978, 78-1 CPD 432.

We cannot object to the nonresponsibility determination here. First, we believe that the preaward survey team acted reasonably in presuming initially that SAFE OHG would be involved in the performance of the contract -- the offer was submitted "c/o SAFE OHG" -- and therefore in visiting SAFE OHG's Frankfurt office.

Second, the visit to S.A.F.E. Export's Baltimore office, which in fact is S.A.F.E.'s main office of record, showed that it was only a mail drop. Thus, the contracting officer was faced with a situation in which he simply was unable to determine from the visits whether S.A.F.E. Export was capable of performing the contract. In this respect, we know of no requirement that a preaward survey team notify a prospective contractor that it is going to visit the firm's business address so that the firm can have time to insure that necessary information is collected at that office. Rather, it is incumbent upon a firm that expects to be awarded a Government contract to be prepared to demonstrate affirmatively that it is responsible. Defense Acquisition Regulation § 1-902 (1976 ed.). We do not think it is surprising that a preaward survey team would react negatively when the principal place of business of the firm being surveyed is an office staffed by a single accountant who simply receives and forwards mail.

Third, the contracting officer was advised that S.A.F.E. Export had performed poorly under a number of other contracts with the Government, and was uncooperative in general. While S.A.F.E. Export complains that the contracting activity has not documented this allegation, the nonresponsibility determination shows that the contracting officer indeed made a substantial effort to investigate S.A.F.E. Export's performance under other Government contracts and participation in other Government procurements, particularly ones by the Army in Europe, and received, almost exclusively, negative reports.

As stated above, our Office will not question a contracting officer's nonresponsibility determination unless it is shown to have been unreasonable or made in bad faith. We see no legal basis to object to the determination in this case.

The protest is denied.

*for Milton J. Arolov*  
Comptroller General  
of the United States